

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1087006
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: Robert Causey Webb

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1555

Robert Causey Webb

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 8 October 1965, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents for 24 months' outright upon finding him guilty of misconduct. The specification found proved alleged that while serving as an A.B. on board the United States SS FLYING GULL under authority of the document above described, on or about 12 July 1965, Appellant did wrongfully assault and batter a fellow crewmember, Andrew Menice, Boatswain, by striking him about the right side and inflicting a puncture wound. Another specification alleging wrongful possession of charez (a form of marijuana) was found not proved.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of Boatswain Andrew Menice and Third Mate Leon Cohen, who was with Mr. Menice when the alleged attack occurred.

In defense, Appellant testified that, using only his fist, he had struck Mr. Menice on the jaw, and that the victim had fallen against a stanchion of a railing. Appellant offered the theory that a pointed corner on the stanchion had caused that chest wound.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and one specification had been proved. The other specification was found not proved. He then entered an order suspending all documents, issued to the Appellant, for a period of 24 months outright.

The entire decision was served on 8 October 1965. appeal was timely filed on 1 November 1965.

FINDINGS OF FACT

On 12 July 1965, Appellant was serving as an A.B. on board the United States SS FLYING GULL and acting under authority of his document while the ship was at sea in the port of Hoboken, New Jersey. On the morning of 12 July 1965, while in an intoxicated condition, the Appellant had come aboard the SS FLYING GULL for his wages and was called up to the officer's lounge to discuss some overtime which he had listed on his overtime sheet, but which the Boatswain, Andrew Menice, disputed. After an argument, the claim was disallowed, and the Appellant was paid off. Shortly after that when the Appellant saw the Boatswains, he threatened him; after returning to his room, the Appellant walked down a passage-way in which Mr. Menice and the third mate, Leon Cohen, were standing and talking together. As the Appellant walked past them, he struck Mr. Menice on the right side about the upper ribs. Neither Mr. Menice nor Mr. Cohen observed any weapon in the Appellant's hand, but they saw that Mr. Menice's shirt was torn and that he was bleeding. On further examination it was determined that Mr. Menice had a puncture type of wound of the chest, and he was referred for medical treatment. The Appellant left the ship and the weapon was never discovered. The entire episode was observed by Mr. Cohen.

The Appellant has no prior record and has served on merchant ships and in the U. S. Navy for 13 years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the finding as to the use of a sharp instrument is contrary to the evidence and that the penalty is too heavy.

APPEARANCE: Standard, Weisberg & Harolds of New York, New York, by A. J. Ballen,
Esquire

OPINION

It is clear that the puncture wound received by Mr. Menice was the result of the blow struck by the Appellant, and the only reasonable inference is that the Appellant had concealed a weapon in his right first. In such a brief encounter it is not surprising that the other two men did not observe a weapon, particularly when there was no reason to suspect that the Appellant would strike the Boatswain. There is substantial evidence to support the finding as to the use of a sharp instrument. The fact that the Appellant had previously threatened the victim and returned to attack indicates that this attack was premeditated, and a more serious offense than one which also involves a weapon but happens during the heat of an affray. A premeditated attack with a sharp instrument without provocation ordinarily warrants revocation of a document, but in this case Examiner cited his reasons for a more lenient order.

ORDER

The order of the Examiner dated at New York, New York, on 8 October 1965, is
AFFIRMED.

E. J. ROLAND
Admiral U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 23rd day of May 1966.

INDEX

Assault

aggravation of offense
dangerous weapon
premeditation
seriousness of offense
sufficiency of evidence

Weapon

sharp instrument
unseen